

Appendix A

SETTLEMENT AGREEMENT

WHEREAS, the United States of America brought suit against Dan and Harriet Alexander ("Alexanders") and the Alexanders brought third-party claims against CET Environmental Services, Inc. ("CET"), Dow Chemical Company ("Dow"), and Ecology & Environment, Inc. ("E&E"), all of which occurred in the U.S. District Court for the Western District of Washington, No. C02-5269 RJB (the "Federal Lawsuit"), and

WHEREAS, the Alexanders sued the Washington State Department of Ecology ("Ecology") in a series of actions including *Alexanders v. Washington State Department of Ecology*, Court of Appeals, Division III, No. 21267-0-III; *Alexanders v. Ecology*, Court of Appeals, Division III, No. 2154-7-III; and *Alexanders v. Ecology*, Superior Court of Benton County, Washington, No. 00-2-02006-3, and also sued CET and E & E in *Dan and Harriett Alexander v. CET Environmental Services, Inc., et al.*, Superior Court of Benton County, Washington, No. 01-2-02135-1, (which was dismissed without prejudice in October, 2002) (collectively the "State Lawsuits"); and

WHEREAS, the Alexanders have sued Kemper Casualty Insurance Company ("Kemper"), Superior Court of King County, Washington, No. 03-2-27496-8 SEA (the "Insurance Coverage Lawsuit"); and

WHEREAS, on Monday, October 27 and Tuesday, October 28, 2003, the United States of America, the Alexanders, CET, Dow, E&E, and Ecology engaged in a mediation facilitated by William Joyce; and

WHEREAS, the parties to this Settlement Agreement recognized the existence of disputed issues of fact and law regarding the allegations in the Federal Lawsuit, the State Lawsuits, and the Insurance Coverage Lawsuit; and

WHEREAS, the parties to this Settlement Agreement wish to avoid the expense and risk involved in continued litigation over the matters alleged in the Federal Lawsuit, the State Lawsuits, and the Insurance Coverage Lawsuit;

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the parties to this Settlement Agreement agree as follows:

1. **Parties.** The parties to this Settlement Agreement are the Alexanders, CET, Dow, E&E, and Kemper (collectively the "Parties"). While not Parties to this Settlement Agreement, the United States of America ("United States") and the State of Washington (the "State") participated in the mediation and resolved their claims in the Federal Lawsuit and the State Lawsuits. However, the resolution of the claims of the United States and the State will be reflected in separate consent decrees or similar documents. Nonetheless, this Settlement Agreement is binding and enforceable as between the Parties on its own terms and is not dependent upon nor shall it be modified by any terms or conditions contained in any agreements subsequently entered into between the Alexanders and the United States or the State.

2. **Purpose.** The purpose of this Settlement Agreement is to resolve any and all claims, demands, damages, actions, causes of action or suits of any kind or nature whatsoever, as alleged or could have been alleged between the Parties in the Federal Lawsuit, the State Lawsuits, and the Insurance Coverage Lawsuit arising out of or relating to the release of the chemical commonly called Dinoseb at, in, on, under or from property currently or formerly owned by the Alexanders near Grandview, Washington. It is the intent of the Parties that all claims of any kind whatsoever, including but not limited to, claims for declaratory or monetary relief and environmental remediation under the federal Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 *et seq.* and the State's Model Toxics Control

Act, RCW 70.105D.010 *et seq.*, common law claims in trespass, negligence and waste, and claims for attorneys' fees, expert costs and other litigation-related costs, be resolved by this Settlement Agreement.

3. United States as Third-Party Beneficiary. While not a party to this Settlement Agreement, the United States is an intended third-party beneficiary. CET and E&E have potential claims for reimbursement from the United States, under their contracts with the United States, for unrecovered costs incurred in defense of the Federal Lawsuit. As part of the resolution of the Federal Lawsuit reached at the mediation, CET and E&E have agreed not to seek recovery of any unreimbursed costs, including but not limited to litigation costs, other than permissible indirect costs as defined by Federal Acquisition Regulation 48 CFR 31.203, incurred in connection with the Federal Lawsuit from the United States.

4. Payments by the Alexanders. Within ten (10) days of the execution of this Agreement, but no later than January 30, 2004, the Alexanders shall make the following settlement payments to the following Parties:

- (a) The Alexanders shall pay to CET the sum of One Hundred Thousand and No/100 Dollars (\$100,000);
- (b) The Alexanders shall pay to Dow the sum of One Hundred Fifty Thousand and No/100 Dollars (\$150,000); and
- (c) The Alexanders shall pay to E&E the sum of Two Hundred Twenty-Five Thousand and No/100 Dollars (\$225,000).

5. Release of all Claims. Effective upon execution of this Settlement Agreement, the Alexanders, CET, E&E, and Dow hereby release, discharge, and forever acquit each other from any and all claims, demands, damages, actions, causes of action or suits of any kind or nature whatsoever, as alleged or could have been alleged in the Federal Lawsuit or the State Lawsuits whether in law or equity, arising out or relating in any way to the release, threatened

release, presence or migration of Dinoseb at, in, on, under and or from property currently or formerly owned by the Alexanders near Grandview, Washington.

Without limiting the generality of the foregoing, this Release includes any and all claims for nuisance, negligence, strict liability, contribution, indemnity, trespass, waste, property damages, loss of use and enjoyment, and/or diminution of property values, personal injuries, attorney fees, or costs under any statutory or regulatory authority, common law or statute. This full and final Release is intended to provide the broadest protection possible for claims and damages as a result of the release, threatened release, presence or migration of Dinoseb at, in, on, under or from property currently or formerly owned by the Alexanders and is specifically intended to cover and include, without limitation, any and all claims, civil or otherwise, past or present, which can or may ever be asserted by the Alexanders, their marital community, estates, dependents, successors and assigns against CET, Dow, and E&E arising out of or relating in any way to the matters described above. By this Settlement Agreement, CET, Dow, and E&E are also releasing any and all claims they may have against each other in connection with the Federal Lawsuit and the State Lawsuits relating to the release, threatened release, presence or migration of Dinoseb at, on, in, under or from property currently or formerly owned by the Alexanders near Grandview, Washington.

6. Dismissal. Within five (5) days of the Alexanders' payment described under paragraph 4 of this Settlement Agreement, the Alexanders, E&E, Dow and CET shall execute and file in the Federal Lawsuit a dismissal with prejudice and without costs to any Party all claims, counterclaims and cross-claims they brought against one another in the Federal Lawsuit.

7. Settlement Between the Alexanders and Kemper. Within five (5) days after the execution of this Settlement Agreement by the Alexanders and CET, the Alexanders and

Kemper shall cause the Insurance Coverage Lawsuit to be dismissed with prejudice, and without costs to any party. Upon execution of this Agreement, the Alexanders and Kemper shall be deemed to have released all claims they may have against each other that arise under or were asserted or could have been asserted in the Insurance Coverage Lawsuit or that arise out of or are in any way related to the Federal Lawsuit or State Lawsuits under any and all insurance policies issued to CET under which the Alexanders may claim additional insured status, including but not limited to any claims for breach of a duty of good faith and fair dealing or implied covenant of good faith and fair dealing, deceptive or unfair trade practices or violation of the Washington Consumer Protection Act, violations of regulations adopted by the Washington Insurance Commissioner or any other statute, code, regulation, rule or doctrine of common law, and any other claim for bad faith or extra-contractual damages, except for those obligations arising out of the Settlement Agreement.

8. Stay of Litigation. A stay has already been entered in the Federal Lawsuit. The Parties agree to mutually seek stays of all other pending State Lawsuits for such periods of time as may be necessary to implement the terms of this Settlement Agreement before such lawsuits are dismissed in accordance with this Settlement Agreement.

9. Authority. The Parties each represent and warrant that they have full power and actual authority to enter into this Settlement Agreement and to carry out all actions required of them by this Settlement Agreement. All persons executing this Settlement Agreement in representative capacities represent and warrant that they have full power and authority.

10. Notice of Default and Enforcement of Settlement Agreement. This Settlement Agreement shall not be subject to arbitration to enforce its terms except as provided below. In the event any Party, acting in good faith, believes another Party has violated the terms of this

Settlement Agreement, the aggrieved Party shall give the offending Party notice of the alleged violation by sending a detailed written statement of the same to the individual designated in accordance with paragraph 11 of this Agreement. This notice is intended to invite a resolution by the Parties of any dispute prior to the institution of litigation. This Settlement Agreement may be subject to arbitration to enforce its terms only upon the expiration of twenty-one (21) days after said notice is posted, at which time, and not before, the aggrieved party may file and serve an action for appropriate relief.

11. Notices. All notices, requests, demands, and other communications called for or contemplated by this Settlement Agreement shall be in writing, and shall be deemed to have been duly given by mailing the same by first-class mail, postage prepaid or by delivering the same by hand, to the following addresses, or to such other addresses as the Parties may designate by written notice in the manner aforesaid, provided that communications that are mailed shall not be deemed to have been given until three business days after mailing:

Alexanders:

Michael B. Gillett
McElroy Law Firm, PLLC
Two Union Square, Suite 3700
601 Union Street
Seattle, WA 98101
mgillett@mcelroylaw.com
(206) 654-4160

CET:

Loren R. Dunn
Riddell Williams, P.S.
1001 Fourth Avenue, Suite 4500
Seattle, WA 98154
ldunn@riddellwilliams.com
(206) 624-3600

Dow:

Sandi J. VanWormer, Counsel
Dow Chemical Company
8th Floor Legal Department
2030 Dow Center
Midland, MI 48674

sjvanwormer@dow.com
(989) 638-3741

Bradley B. Jones
Gordon, Thomas, Honeywell
P.O. Box 1157
Tacoma, WA 98401-1157
bjones@gth-law.com
(253) 620-6485

E&E

Beth Ginsberg
Stoel Rives, LLP
One Union Square, Suite 3600
600 University Street
Seattle, WA 98101-3197
bsginsberg@stoel.com
(206) 624-0900

Kemper:

Linda Sikora, Esq.
Kemper Insurance Companies
Kemper Environmental
Princeton Forrestal Village
155 Village Blvd., Suite 300
Princeton, NJ 08540-5743

Any party may change the name or address of the person to whom notice shall be given on said Party's behalf, by delivering notice of the change to all other Parties as provided under this paragraph.

12. **Arbitration.** Any claim between the parties under this Settlement Agreement shall be decided by arbitration pursuant to the rules then in effect of the Washington Arbitration & Mediation Services, Inc. [WAMS]. The Parties agree that William F. Joyce shall act as arbitrator. If Mr. Joyce is unwilling or unable to serve as arbitrator, the Parties shall select one arbitrator within 10 days of the arbitration demand. The arbitrator shall be an attorney with at least 10 years experience. If the Parties are unable to agree on an arbitrator, WAMS may appoint the arbitrator. The arbitrator shall determine whether a claim must be arbitrated under this Settlement Agreement. The arbitrator shall authorize such discovery as may be necessary to

ensure a fair hearing and shall limit such discovery to that which is necessary in order to keep the costs of the arbitration to a minimum. The arbitrator shall apply substantive law and may award injunctive relief or any other remedy available to a judge, including attorney fees and costs to the prevailing party. The cost of arbitration shall be paid by the non-prevailing Party or Parties as determined by the Arbitrator. The prevailing Party shall be entitled to its reasonable attorney's fees and costs as determined by the Arbitrator. In the event the non-prevailing party institutes judicial proceedings challenging the arbitration award, the party that substantially prevails in such judicial proceeding shall be reimbursed for all costs of such proceedings, including attorneys' fees.

13. No Admission to Liability. This Settlement Agreement does not constitute and shall not be construed as an admission of liability or responsibility on the part of any of the Parties, who continue to deny all liability and disclaim all responsibility. The Parties have entered into this Settlement Agreement solely for the purpose of resolving disputed claims and avoiding costs of litigation.

14. Governing Law. This Settlement Agreement is entered into under the laws of the state of Washington, and if it becomes necessary to interpret or enforce any of its terms, it is the intent of all Parties that the laws of the state of Washington shall apply.

15. Consent to Jurisdiction and Venue. All Parties shall submit and not object to jurisdiction and venue in the U.S. District Court for the Western District of Washington, in connection with any claims arising out of this Settlement Agreement.

16. Binding Effect; Assignability. This Settlement Agreement shall bind and inure to the benefit of the Parties hereto and their respective heirs, legatees, representatives, receivers, trustees, successors, transferees and assigns.

17. Attorneys' Fees. Should it be necessary for any party to this Settlement Agreement to initiate legal proceedings to adjudicate any issues arising hereunder, the Party or Parties to such legal proceedings who substantially prevail shall be entitled to reimbursement of their attorneys' fees, costs, expenses and disbursements (including the fees and expenses of expert and fact witnesses) reasonably incurred or made by the substantially prevailing Parties in preparing to bring suit, during suit, on appeal, on petition for review, and in enforcing any judgment or award, from the other Party or Parties.

18. Severability. This Settlement Agreement does not violate any federal or state statute, rule, regulation or common law known; but any provision which is found to be invalid or in violation of any statute, rule, regulation or common law shall be considered null and void, with the remaining provisions remaining viable and in effect.

19. Cooperation in Execution of Documents. The Parties agree properly and promptly to execute and deliver any and all additional documents that may be necessary to render this Settlement Agreement legally and practically effective. This paragraph shall not require the execution of any document that expands, alters or in any way changes the terms of this Settlement Agreement.

20. Headings Not Controlling. The paragraph headings included herein are for reference only and are not a part of this Settlement Agreement. The headings shall not control or alter the meaning of this Settlement Agreement as set forth in the text.

21. Counterparts. This Settlement Agreement may be executed in any number of identical counterparts, notwithstanding that all Parties have not signed the same counterpart, with the same effect as if all Parties had signed the same document. All counterparts shall be construed as and shall constitute one and the same agreement.

22. Equal Opportunity to Participate in Drafting. The Parties have participated and had an equal opportunity to participate in the drafting of this Settlement Agreement. No ambiguity shall be construed against any Party based upon a claim that that party drafted the ambiguous language.

23. Waiver. Any of the terms or conditions of this Settlement Agreement may be waived, but only by a written notice signed by the party waiving such terms or conditions. A waiver or any breach of, or failure to enforce, any of the terms or conditions of this Settlement Agreement shall not in any way affect, limit or waive a party's rights to enforce compliance thereafter with each and every term and condition of this Settlement Agreement.

24. Statute of Limitations. All claims or causes of action arising out of this Settlement Agreement must be brought within three years after they accrue. Failure to bring suit within this time period shall be a complete bar to any such claims or causes of action.

25. Final and Complete Agreement. This Settlement Agreement constitutes the final and complete expression of the Parties on all subjects. This Settlement Agreement may not be modified, interpreted, amended, waived or revoked orally, but only by a writing signed by all Parties. This Settlement Agreement supersedes and replaces all prior agreements, discussions and representations on all subjects. No party is entering into this Settlement Agreement in reliance on any oral or written promises, inducements, representations, understandings, interpretations or agreements other than those contained in this Settlement Agreement and the exhibits hereto.

26. Full Understanding; Independent Legal Counsel. The Parties each acknowledge, represent and agree that they have read this Settlement Agreement; that they fully understand the terms thereof; that they have been fully advised by their legal counsel,

accountants and other advisors with respect thereto; and that they are executed by them upon the advice and recommendation of their independent legal counsel.

EXECUTED AND EFFECTIVE the date first above written.

THE ALEXANDERS

Dan Alexander

Harriet Alexander

CET ENVIRONMENTAL SERVICES, INC.

By: _____
Steve Davis, President
Its: _____

DOW CHEMICAL

By: _____
Its: _____

ECOLOGY AND ENVIRONMENT, INC.

By: _____
James B. Collins
Its: Vice President

**KEMPER CASUALTY INSURANCE
COMPANY**

By: _____
Its: _____

accountants and other advisors with respect thereto; and that they are executed by them upon the advice and recommendation of their independent legal counsel.

EXECUTED AND EFFECTIVE the date first above written.

THE ALEXANDERS

Dan Alexander

Harriet Alexander

CET ENVIRONMENTAL SERVICES, INC.

By: _____
Steve Davis, President
Its: _____

DOW CHEMICAL COMPANY

By: ET
Its: Superfund Attorney

ECOLOGY AND ENVIRONMENT, INC.

By: _____
Its: _____

Harriet Alexander

CET ENVIRONMENTAL SERVICES, INC.

By: _____
Steve Davis, President

DOW CHEMICAL

By: _____
Its: _____

ECOLOGY AND ENVIRONMENT, INC.

By: _____
Its: _____

**KEMPER CASUALTY INSURANCE
COMPANY**

By: _____
Its: _____

Harriet Alexander

CET ENVIRONMENTAL SERVICES, INC.

By: _____
Steve Davis, President
Its: _____

DOW CHEMICAL

By: _____
Its: _____

ECOLOGY AND ENVIRONMENT, INC.

By: _____
Its: _____

**KEMPER CASUALTY INSURANCE
COMPANY**

By: _____
Linda S. Sikora
Its: Claims Counsel

interpretations or agreements other than those contained in this Settlement Agreement and the exhibits hereto.

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EXECUTED AND EFFECTIVE the date first above written.

THE ALEXANDERS



Dan Alexander

Harriet Alexander

Appendix B

**Alexander Farms Site
Removal Action
Excavation Areas
Location Map**

Note: Size & Location of TP-9 and TP-5 are approximate.



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